

PREFACE

Exempt Organizations (EO) is dedicated to fulfilling the IRS mission to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness. Customer Education & Outreach (CE&O) works closely with Exempt Organizations staff to accomplish this by:

- Developing tailored education programs for customer categories
- Coordinating the development, revision and design of forms, publications and other non-speaker outreach activities
- Making standardized educational materials available for outreach efforts
- Establishing a way for customers to be heard

This workshop and our materials are part of a customized program for representatives of small and medium-sized exempt organizations. We hope that this text helps you become more familiar with tax laws governing exempt organizations and understand how compliance with these laws will strengthen the organization(s) you represent.

The material in this book is for educational use only and may not be cited as precedent.

/s/ Lois G. Lerner

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Director, Exempt Organizations

Appendix II.

OTHER INFORMATION

Content

Section A. Chapter 3 Case Studies and Answers

Section B. Chapter 6 Employment Issues Quiz and Answers

Section C. List of Exhibits

Section A. Chapter 3, Case Studies and Answers (Exhibit B)

Case Study 1

Jane Doe founded XYZ Charity, a 501(c)(3) organization, to aid the victims of severe injuries resulting from motor vehicle accidents, stroke, drowning, and other related causes. XYZ provides funds and therapeutic equipment, runs fundraising affairs and social functions to aid victims, and exchanges and disseminates information concerning recent breakthroughs in care and treatment of injuries in all stages of recovery.

Jane's family has supported her efforts by financially supporting the organization and serving as members of the Board of Directors. The Doe family maintains complete control of XYZ Charity.

Wanda Doe, Jane's daughter, was the victim of a motor vehicle accident. Through the Charity, she receives services and assistance. Roughly, thirty percent of the organization's income is expended for Wanda's benefit.

- (1) Does this scenario show private benefit or inurement? Why?

Answer: This scenario shows a clear case of private inurement. The distribution of funds for the benefit of Wanda assists the Doe family in providing for her care. This relieves the family from the economic burden of providing such care. Depending on all the facts and circumstances, the agent might propose additional sanctions on the organization and/or revocation of its exemption.

- (2) If there is private benefit or inurement, what could the organization have done to prevent it?

Answer: The organization needs to diversify the Board of Directors. By seeking new Board Members represent the community that XYZ serves, the organization decreases the likelihood that the Charity's assets will be used to benefit one individual or a small group of individuals. Many inurement issues may be resolved by having the organization expand its Board of Directors so that control is not concentrated within one or two families. The board should have control over salaries, contracts, distribution of benefits, etc. The organization could also formalize the selection process for recipients of their funds.

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Section A. Chapter 3, Case Studies and Answers (Exhibit B), Continued

Case Study 2

Charity B was formed by parents of children attending a private school. Charity B's sole purpose is to provide bus transportation to and from the school for the member's children. The Board of Directors and all positions within the charity are filled by the parents. The parents pay an initial fee and an additional charge for each child. The organization's income equals the operation's expenses.

Does this scenario show private benefit or inurement? Why?

Answer: This scenario shows unacceptable private benefit. When a group of individuals create an organization to provide a cooperative service for themselves, they are servicing a private interest. Under the circumstances described, by providing bus transportation for school children, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Depending on all the facts and circumstances, the agent might propose additional sanctions on the organization and/or revocation of its exemption.

Continued on next page

Section A. Chapter 3, Case Studies and Answers (Exhibit B), Continued

Case Study 3

Charity C was formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to further enhance its recreational features. The lake is large and borders several municipalities. The public uses it extensively for recreation. Along its shores are public beaches, launching ramps, and other public facilities. Charity C is financed by contributions from lake front property owners, members of the adjacent community, and municipalities bordering the lake. The improved water quality and recreational opportunities surrounding the lake have increased the property values of the lake front residences.

- (1) Does this scenario show private benefit or inurement? Why?

Answer: No. The benefits from Charity C's activities flow principally to the general public through well maintained and improved public recreational facilities. Any private benefit derived by the lake front property owners do not lessen the public benefits flowing from the organization's operations. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners.

- (2) If there is private benefit or inurement, what could the organization have done to prevent it?

Answer: There is no private benefit or inurement in this scenario.

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Section A. Chapter 3, Case Studies and Answers (Exhibit B), Continued

Case Study 4

Scenario A – Individual Activity by an Organization’s Leader

B is the president of University K, a 501(c)(3) organization. University K publishes a monthly alumni newsletter. In each issue, President B has a column titled “My Views.” The month before the election, President B states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column.

- (1) What factors should be considered in determining whether the prohibition against political intervention has been violated?

Answer: The following factors should be considered: For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university.

- (2) After considering these factors, do you think President B’s actions constitute political campaign intervention attributable to University K? Why or why not?

Answer: Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Scenario B – Candidate Appearances

E is the president of N, a historical society with a 501(c)(3) exemption. In the month prior to an election, President E invites the four Congressional candidates for the district in which Society N is located to address the members, one each at a regular meeting held in successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. One of the candidates declines the invitation. Society N’s publicity announces the dates for each of the candidate’s speeches, states that the order of the speakers was determined at random and indicates that one invited candidate has declined. President E’s introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate.

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Section A. Chapter 3, Case Studies and Answers (Exhibit B), Continued

Case Study 4 (continued)

Scenario B, continued

- (1) What factors should be considered in determining whether the prohibition against political intervention has been violated?

Answer: The following factors should be considered:

- Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members.
- Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications

- (2) After considering these factors, has Society N engaged in political activity by inviting the speakers? Why or why not?

Answer: Since Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate includes no comments on their qualifications or any indication of a preference for any candidate, Society N's actions do not constitute political campaign intervention.

Section B. Chapter 6, Employment Issues Quiz and Answers (Exhibit D)

Question 1 ABC Foundation placed the following advertisement in the newspaper.

A friendly individual who enjoys working with people is needed to answer a multi-line telephone, greet visitors when they come in the door, make coffee, and perform various other tasks when time permits. This qualified individual must be able to work from 8:00 a.m. – 5:00 p.m. The position pays \$10.00 an hour.

Would this person be an employee or independent contractor?

Answer: This person is an employee. ABC Foundation, the employer, has the right to direct and control the worker.

Question 2 DEF Country Club, Inc., is looking for an experienced accountant who specializes in working with tax-exempt organizations. The accountant must be able to prepare a compilation of the financial statements on a monthly basis, present these statements to the board of directors at the monthly meetings, perform the annual gambling audit, and prepare the 990 and 990-T returns at the end of the year by the due date.

Would this person be an employee or independent contractor?

Answer: Given the facts in this scenario, the accountant is an independent contractor.

Question 3 The president of ABC Foundation manages the day-to-day activities of the organization, supervises managers who supervise the employees, signs the organization's checks, presides over monthly board meetings, and performs other tasks as necessary to ensure the successful operation of the organization.

Would this person be an employee or independent contractor?

Answer: The president is a corporate officer by statute. See Internal Revenue Code section 3121(d)(1). Furthermore, the president is performing duties of a corporate officer.

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Section B. Chapter 6, Employment Issues Quiz and Answers (Exhibit D), Continued

Question 4

GHI Private School for the Gifted hired a janitor to clean up the school after hours. The janitor must provide all necessary equipment and supplies. He may come in and clean anytime that school is not in session but must come in at least three times per week. The janitor is provided a key to the school. The school is billed monthly for the services of the janitor. The janitor has several other clients.

Would this person be an employee or independent contractor?

Answer: Given the facts in this scenario, the janitor is an independent contractor.

Question 5

JKL Youth Bowling League was sued as a result of a youth dropping a bowling ball on a spectator's foot. The spectator, Mr. Jackson, filed suit in district court and is suing for \$250,000. JKL Youth Bowling League contracts with a local attorney who specializes in this type of lawsuit. The attorney charges \$250 per hour.

Would this person be an employee or independent contractor?

Answer: Given the facts in this scenario, the attorney is an independent contractor.

Question 6

The MNO Little League organization hired coaches selected by the League's officers. The board sets the times and places for all the games. The coaches are fathers or mothers of the children who play on the team. The organization has established policies and procedures that coaches are required to follow. Generally, the officers do not interfere with the coaching unless there is a problem. The coaches receive \$500 per season.

Would these coaches be employees or independent contractors?

Answer: Given the facts in this scenario, the coaches are employees.

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Section B. Chapter 6, Employment Issues Quiz and Answers (Exhibit D), Continued

Question 7 PQR Theatre places the following advertisement in the newspaper.

Needed: ushers, ticket takers, and ticket sellers. Hourly rate is negotiable based on experience and reliability.

Would these workers be employees or independent contractors?

Answer: The ushers, ticket takers, and ticket sellers are all employees of PQR Theatre.

Question 8 A salaried golf professional and his assistants manage the pro shop of a country club. In addition, the club requires them to give lessons to the club's members at its established rates.

Would these persons be employees or independent contractors?

Answer: The individuals are employees of the club. See Rev. Rul. 68-626, 1968-2 C.B. 466.

Question 9 A golf professional sells lessons and equipment on the premises of a golf club. She sets prices, makes appointments, and carries on her activities with permission of the club, but without orders or instructions from club members or officials.

Would this person be an employee or independent contractor?

Answer: The individual is not an employee. She is engaged in a trade or business and the income therefrom must be considered in computing net earnings from self-employment.

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Section B. Chapter 6, Employment Issues Quiz and Answers (Exhibit D), Continued

Question 10 The STU Foundation hires van drivers to transport physically disabled individuals to their doctors' appointments. The STU Foundation owns the vans, pays the insurance and all other related expenses for the vans, and uses the vans only for this purpose. The van drivers are not allowed to take side trips. Their purpose is solely to transport physically disabled individuals to their doctor's appointments.

Would these persons be employees or independent contractors?

Answer: The van drivers are employees of STU Foundation.

Question 11 The STU Foundation hires van drivers to transport physically disabled individuals to their doctors' appointments. The drivers own their own vans and pay for the gas, insurance and maintenance. The drivers charge \$1.00 per mile and are willing to stop anywhere.

Would this person be an employee or independent contractor?

Answer: The van drivers are independent contractors.

Question 12 XYZ Anonymous engages in charitable gambling. It hires a gambling manager who supervises employees conducting the pull tab games, prepares the monthly reports, audits the games, makes the deposits, and reports at the monthly meetings.

Would this person be an employee or independent contractor?

Answer: The gambling manager is an employee.

Section C. List of Exhibits

Chapter 2	Exhibit A, <i>Organization Reference Chart</i> (2 pages)
Chapter 3	Exhibit B, <i>Jeopardizing Section 501(c)(3) Status - Case Studies</i> (2 pages) Exhibit C, <i>Tax-Exempt Health Care Organizations Revised Conflicts of Interest Policy</i> (4 pages)
Chapter 6	Exhibit D, <i>Employment Issues - Quiz</i> (3 pages)
Chapter 8	Exhibit E, Publication 4839, <i>Annual Form 990 Filing Requirements for Tax-Exempt Organizations</i>

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